

CARROLL L. VICKERS

JANUARY 29, 1951.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 502]

The Committee on the Judiciary, to which was referred the bill (S. 502) for the relief of Carroll L. Vickers, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of the proposed legislation is to authorize the Comptroller General to allow credit in the accounts of Carroll L. Vickers, authorized certifying officer, Federal Works Agency, for the amount of \$840.98 on account of payments made in accordance with a voucher certified by the said certifying officer. Payment is contingent on the Housing and Home Finance Administrator certifying that in his opinion there is no evidence of fraud or collusion on the part of the certifying officer in connection with such payments.

AMENDMENT

Strike out all after the enacting clause and insert in lieu thereof the following:

Upon certification by the Housing and Home Finance Administrator or his authorized representative that Housing and Home Finance Administration has no evidence of fraud or collusion on the part of Carroll L. Vickers, authorized certifying officer, Federal Works Agency, the Comptroller General of the United States is authorized and directed to allow credit in the accounts of said certifying officer for the amount of \$840.98, for which credit has been suspended, and disallowances raised, by the General Accounting Office, on account of payments made in accordance with a voucher certified by the said certifying officer.

STATEMENT

An identical bill was reported favorably to the Senate in the Eighty-first Congress but no action was taken thereon.

It appears that during the course of construction of a hospital addition at New Bern, N. C., under the auspices of the Federal Works Agency, involving a total amount of \$21,335.12, a change order was issued increasing the total price by \$840.98. The change order was issued because the work on the contract had been suspended pending the issuance of a priority order by the War Production Board. During the period the work was suspended, it was necessary for the contractor to hire watchmen and guards necessary for the adequate protection of the property and materials during that period. The General Accounting Office took exception to such payment for the reason that there was no provision in the contract for reimbursement of expenses incurred by reason of work stoppage.

The General Services Administration, in recommending enactment of the bill, states that it is their opinion that the amount in question represents only out-of-pocket expense incurred by the contractor for the benefit of the Government, and the Department of Justice concurs in the opinion of the General Services Administration.

Attached hereto and made a part of this report are the above-referred-to letters from the Department of Justice and the General Services Administration, as well as a letter received from the Comptroller General.

DEPARTMENT OF JUSTICE,
Washington, D. C., August 31, 1950.

HON. PAT MCCARRAN,
*Chairman, Committee on the Judiciary,
United States Senate, Washington, D.C.*

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice relative to the bill (S. 3749) for the relief of Carroll L. Vickers, authorized certifying officer, Federal Works Agency.

The bill would authorize the Comptroller General to allow credit in the accounts of Carroll L. Vickers, authorized certifying officer, Federal Works Agency, for the amount of \$840.98, for which credit has been suspended and disallowances raised by the General Accounting Office on account of payments made in accordance with a voucher certified by the said certifying officer. The bill would also provide that the Secretary of Treasury or his authorized representative shall certify that in his opinion there is no evidence of fraud or collusion on the part of the certifying officer in connection with such payments.

In compliance with your request, reports were obtained from the General Services Administration, the Treasury Department, and the General Accounting Office concerning this legislation, and are enclosed. According to those reports, in December 1942 the Ernest Construction Co. entered into a contract with the Government for the construction of a hospital addition in New Bern, N. C., at a cost of \$21,335.12. The payment here involved was made pursuant to a change order whereby the contract price was increased by \$840.98. This change order recited that the amount was "in full payment and satisfaction of the contractor's claims for reimbursement for the period during which construction was suspended awaiting action by the War Production Board." The contractor's claims covered the extra costs of watchmen and guards necessary for adequate protection of the property and materials during the period that the work was suspended. The General Accounting Office took exception to such payment for the reason that there was no provision in the contract for reimbursement of expenses incurred by reason of work stoppage. The General Services Administration strongly recommends that the bill be enacted, the Treasury Department refrains from making any recommendation, and the Comptroller General strongly recommends against favorable action upon the bill.

Under the act of December 29, 1941 (31 U. S. C., secs. 82b-82d), the Congress has provided that a certifying officer shall be held responsible for the legality of proposed payments and shall be held accountable for the amount of any payment, which is prohibited by law or which does not represent a legal obligation under the appropriation or fund involved. This act further provides that the Comptroller General may, in his discretion, relieve Government certifying officers of liability for payments otherwise proper whenever he finds that such officers (1) "did not know, and by reasonable diligence and inquiry could not have ascertained, the actual facts," or (2) "that the obligation was incurred in good faith, that the payment was not contrary to any statutory provision specifically prohibiting payments of the character involved, and that the United States has received value for such payment." In view of the circumstances here involved, it appears that the officer is not entitled to relief under the 1941 act.

The relief that will accrue to this officer under the proposed bill is similar to that allowed by the Wartime Relief Act of July 26, 1947 (31 U. S. C., sec. 95a (note)), which relieved Army and Navy disbursing officers for losses incurred between 1939 and 1946 of funds or of substantiating papers pertaining to such funds. Under that act, which expired July 26, 1949, the Comptroller General relieved such officers of responsibility and allowed credits in the settlement of their accounts so long as the loss or payment appeared "to be free from fraud and collusion and incurred or made in good faith." Since the facts reported indicate that this certifying officer acted in good faith and that there is no fraud or collusion on his part, it would appear that credit should be allowed in his accounts.

In view of the fact that the liquidation of the functions performed by this certifying officer have been transferred to the Housing and Home Finance Agency under the recent Reorganization Plan No. 17, it is recommended that the words "Secretary of the Treasury" be stricken from line 10 of the proposed bill, and the words "Housing and Finance Administrator" inserted in lieu thereof.

The Department of Justice concurs in the views of the General Services Administration.

The Director of the Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Yours sincerely,

PEYTON FORD,
Deputy Attorney General.

GENERAL SERVICES ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

DEAR MR. CELLER: Reference is made to your letter of June 16, 1950, requesting a report on H. R. 8854, a bill for the relief of Carroll L. Vickers, authorized certifying officer, Federal Works Agency, in the amount of \$840.98. This covers a payment made to the Ernest Construction Co. under contract WArch-455 for the construction of an addition to the Good Shepherd Hospital, New Bern, N. C.

The record shows that after the construction had been partially completed, the Federal Works Agency was compelled to order the contractor to discontinue because the War Production Board had declined to issue a preference rating for the project. After extended delay, the necessary preference rating was obtained and work resumed, although the contractor incurred some extra cost during the delay for protection of the incomplete work. The contract was amended by change order No. 7 to increase the contract price by \$840.98 recited to be "in full payment and satisfaction of the contractor's claims for reimbursement for the period during which construction was suspended awaiting action by the War Production Board." Mr. Vickers certified payments strictly in accord with this amendment to the contract, and this is the source of the exception raised by the General Accounting Office.

The amendment to the contract was designed to compensate the contractor for the extra cost of watchmen and guards necessary for adequate protection of the property, and for the expense of cutting out and replacing wall studs, floor timbers, and other structural materials damaged by exposure to the weather for the period the work was suspended. It is our opinion that the amount in question represents only out-of-pocket expense incurred by the contractor for the benefit of the Government. The General Accounting Office has declined to

remove this exception on the ground that the inability of the contractor to secure necessary priorities is not ground for charging the Government with the expense incurred during the resulting delay. However, in this case it should be noted that the delay was not due to any failure of the contractor in securing materials or labor but resulted solely from the inability of the Federal Works Agency to secure approval for the project itself. Since the payment by Mr. Vickers was made strictly in accordance with the contract, and the Government got the full benefit of the service performed, it is strongly recommended that the bill be enacted.

Pursuant to the provisions of Reorganization Plan No. 17 of 1950, the liquidation of the functions on which Mr. Vickers was engaged at the time change order No. 7 was issued were transferred to the Housing and Home Finance Agency, as were the personnel engaged in carrying out such functions. As a result, Mr. Vickers is now employed by the Housing and Home Finance Agency. It is therefore recommended that the words "Secretary of the Treasury" be stricken from line 10 and the words "Housing and Home Finance Administrator" be inserted in lieu thereof.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington 25, July 11, 1950.

HON. PAT MCCARRAN,
*Chairman, Committee on the Judiciary,
United States Senate.*

MY DEAR MR. CHAIRMAN: The Department of Justice has advised this Office of a request received from your committee for reports from interested agencies on S. 3749, Eighty-first Congress, entitled "A bill for the relief of Carroll L. Vickers, authorized certifying officer, Federal Works Agency," which provides in pertinent part, as follows:

"That the Comptroller General of the United States is authorized and directed to allow credit in the accounts of Carroll L. Vickers, authorized certifying officer, Federal Works Agency, for the amount of \$840.98, for which credit has been suspended, and disallowances raised, by the General Accounting Office, on account of payments made in accordance with a voucher certified by the said certifying officer: *Provided*, That the Secretary of the Treasury or his authorized representative shall certify that in his opinion there is no evidence of fraud or collusion on the part of the said certifying officer in connection with such payments."

The record shows that an exception was stated against the said certifying officer by the Audit Division of the General Accounting Office, in connection with the payment of \$840.98 on voucher 5-83916, May 1944 accounts of G. F. Allen to Ernest Construction Co., under contract No. WArch-455, dated December 7, 1942.

Under the terms of the contract the contractor agreed to furnish the materials and perform the work for the construction of an addition to Good Shepherd Hospital, New Bern, N. C., for the consideration of \$21,335.13. The work was to be completed within 180 calendar days, after the effective date of commencement specified in the order to proceed. In the event of failure to complete the work within the contract time, the contractor was to be assessed liquidated damages at the rate of \$10 per calendar day of delay, except that liquidated damages were not to be assessed for delays when shown to be due to causes beyond the control and without the fault or negligence of the contractor, including acts of the Government. No priority rating applicable to materials and equipment needed for performance of the contract had been secured prior to preparation of the specifications, but prospective bidders had been advised in the invitation that the contracting officer had applied for an appropriate priority rating, and that special efforts would be made by the contracting officer to obtain an adequate priority rating in the event that the rating furnished would be inadequate, or would not be applicable to certain items necessary for the contract work.

It appears that the War Production Board at first disapproved the involved project, and that the contract work was suspended on March 3, 1943, because of the lack of a priority order. However, a preference rating of WA-3 was granted on May 1, 1943, and thereupon the contract work was resumed, and thereafter completed. By change order No. 1, the contract time for completion was extended 83 calendar days because of "deferment of a priority rating;" and by change order No. 7, issued February 24, 1944, the contract price was increased in the amount of \$840.98 "in full payment and satisfaction of the contractor's claim for reimbursement for the period during which construction was suspended

awaiting action by the War Production Board." An exception to the payment of \$840.98 was taken by the Audit Division of the General Accounting Office, for the reason that there was no provision in the contract for reimbursement of expenses incurred by reason of work stoppage.

With respect to the matter of delays due to operation of the priority system, it has been held that the Government is not liable for damages occasioned by such delays (*Ross Electric Construction Company v. United States*, 111 C. Cls. 644, 663, and cases there cited). Also, it has been held that where, as here, the parties anticipated that there might be delays by the Government in connection with the contract work, and have provided in advance to protect the contractor from the consequences of such delay by relieving him from the assessment of liquidated damages, the Government is not liable to the contractor for damages occasioned by its delay in connection with the contract work (*United States v. Foley Company*, 329 U. S. 64). Inasmuch as the performance time under the instant contract was extended to cover the period of the involved delay, relieving the contractor from the assessment of liquidated damages therefor, the contractor is not entitled to any further relief by reason of such delay.

With respect to the proposed legislation, careful consideration should be given the responsibilities which specifically have been placed upon certifying officers by the Congress, and the provision for relieving such officers which are contained in section 2 of the act approved December 29, 1941 (55 Stat. 875). The said act provides that a certifying officer shall be held responsible for the legality of proposed payments and be held accountable and required to make good to the United States the amount of any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved. It further provides that the Comptroller General may, in his discretion, relieve certifying officers of liability for any payment otherwise proper whenever he finds "(1) that the certification was based on official records and that such certifying officer or employee did not know, and by reasonable diligence and inquiry could not have ascertained, the actual facts, or (2) that the obligation was incurred in good faith, that the payment was not contrary to any statutory provision specifically prohibiting payments of the character involved, and that the United States has received value for such payment."

Inasmuch as the Government was not legally liable for the costs covered by change order No. 7 and, furthermore, received no value for such payment, the certifying officer may not be relieved from responsibility for the improper payment under the authority of section 2 of the act of December 29, 1941, *supra*.

Under the circumstances, the liability of certifying officers having been defined generally by Congress, there is, in my view, no reasonable justification for giving an individual certifying officer special consideration by way of legislation providing relief beyond that afforded certifying officers as a class under the provisions of the act of December 29, 1941. Furthermore, the stated exception is similar to numerous others which have been stated by this Office. To enact relief legislation here would be to accord this case preferential treatment and produce a result manifestly unfair to other certifying officers.

For the above reasons I strongly recommend against favorable action upon the proposed legislation.

Sincerely yours,

LINDSAY C. WARREN,
Comptroller General of the United States.

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